

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

RICHARD B. JENKINS, SR.,)	CASE NO. 1:08 CV 357
)	
Petitioner,)	JUDGE DAVID A. KATZ
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
GERALD T. MCFAUL,)	<u>AND ORDER</u>
)	
Respondent.)	

On February 13, 2008, petitioner pro se Richard B. Jenkins, Sr., an inmate at the Cuyahoga County Detention Center, filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. The petition and attachments indicate Jenkins challenges his convictions, pursuant to an August 23, 2007 guilty plea, of theft and passing bad checks. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for the petition, Jenkins asserts he has was denied the right of appeal and the effective assistance of counsel.

It is apparent of the face of the petition that he has a direct appeal pending in the Ohio Court of Appeals. Thus, without regard to the potential merits of the grounds sought to be raised herein, the petition is obviously premature.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/ David A. Katz

DAVID A. KATZ
UNITED STATES DISTRICT JUDGE